IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 21-6-2006

Coram

The Honourable Mr.Justice N.PAUL VASANTHAKUMAR

Writ Petition No.5599 of 1998

P.Venkatesan ... Petitioner

Vs.

1. The Management of Pattukottai
Azhagiri Transport Corporation Ltd.,
(now renamed as Tamilnadu State
Transport Corporation), Vellore.

2. The Presiding Officer,
Labour Court,
Vellore. ... Respondents

This writ petition has been filed under Article 226 of Constitution of India, praying this Court to issue a writ of Certiorarified mandamus, calling for the records from the 2nd respondent relating to the award dated 20.11.1996 in I.D.No.443 of 1994 and quash that portion of award holding the petitioner guilty of the charges and denying the petitioner continuity of service, backwages and other benefits and to direct the 1st respondent to reinstate the petitioner with backwages, continuity of service and other benefits and award costs.

For Petitioner : Mr.D.Hariparanthaman

For 1st Respondent : Mr.V.R.Kamalanathan

2nd respondent : Court

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Prayer in the writ petition is to quash the award dated 20.11.1996 in I.D.No.443 of 1994 passed by the 2nd respondent and to direct the 1st respondent to reinstate the petitioner with backwages, continuity of service and other benefits and award costs.

2. The facts giving raise to filing of this writ petition are as follows:

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(a) The petitioner was employed as Conductor in the first respondent Transport Corporation. On 27.3.1992, while the petitioner was on duty in the bus route 459-A, running between Kuppam and Thirupathur, at 8.00 p.m., near Pachur railway gate, the checking officials got into the bus and at that time there were 137 passengers and five luggages in the bus. When the bus reached Natrampalli, which is 3 kms away from Pachur railway gate, the checking officials found that 49 packets of liquor rolled in a gunny bag at the left side of the driver's seat. When petitioner asked the passengers, nobody claimed ownership of the liquor packets. The petitioner being the Conductor, lodged a complaint in the Police Station. Later, the Police closed the case on the ground that they were not able to trace owner of the arrack packets.

(b) Petitioner was placed under suspension by order dated 28.3.1992, pending disciplinary action. A charge memo dated 3.4.1992 was issued alleging that the petitioner permitted the driver of the bus to transport the liquor packets against the rules of the Corporation and the petitioner was irresponsible in his duties. The said suspension order was revoked by order dated 21.4.1992. Petitioner submitted his explanation for the said charge memo stating that there were 137 passengers in the bus though the passenger capacity of the bus was only 56 and that the alleged occurrence took place during night hours and the luggage was too small and it could not be easily noticed due to the crowd in the bus. Petitioner also pointed out, the allegation is that the petitioner permitted the driver of the bus to transport the liquor and the report of the Checking Official is contrary to the allegation, even though the charge sheet is based on the said report dated 27.3.1982. Petitioner further submitted that he made a complaint along with the Checking Officials that the liquor packets were not claimed by any of the passengers and the Police, even though registered a case, subsequently dropped the case on the ground that the offender was not traceable.

(c) The explanation having been found not satisfactory, an enquiry was ordered by the management and one of the Checking Official was examined during the enquiry. The Checking Official did not state that the driver transported the liquor and the petitioner helped the driver in transporting the liquor. According to the witness, both the driver and the petitioner were responsible for the unclaimed luggage of liquor packets. The enquiry Officer gave a finding in a cryptic manner stating that the charges were proved. Based on the said finding, petitioner and driver were dismissed by the management by order dated 22.7.1993 even though the crux of the charge is against the driver of the bus.

(d) The driver of the bus, even though was proceeded against, he was taken back on service as fresh entrant by the management by

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way of 18(1) settlement. According to the petitioner, the driver was having only two years of previous service. Whereas, the petitioner has put in 23 years of service. It is the further case of the petitioner that the driver appeared to have involved in a similar case on 13.5.1991 while he was on duty and therefore his case cannot be equated with that of the petitioner.

(e) Petitioner raised I.D.No.443 of 1994 before the second respondent as the conciliatory efforts failed. Both sides did not let in evidence, but the enquiry records were marked by consent. The second respondent passed an award on 20.11.1996 holding that the charges against the petitioner are proved in the domestic enquiry as per the records. However, the Labour Court held that since the driver was reinstated afresh, dismissing the petitioner from service was arbitrary and discriminatory and directed the first respondent/management to reinstate the petitioner afresh as was done in the case of the driver, but denied continuity of service, backwages and other benefits. The denial of backwages and continuity of service made in the award is challenged by the petitioner in this writ petition.

(f) The grounds of attack by the petitioner are that the enquiry report is cryptic and no further enquiry/additional evidence was adduced before the Labour Court; that there is no analysis of evidence in the finding given by the Enquiry Officer; that there is no proof that the petitioner helped the driver in transporting arrack; that the Charge memo and enquiry officer's report are contrary to the report of the checking inspectors; and that, the Enquiry Officer as well as the Labour Court failed to consider the number of passengers viz., 137 and the time of occurrence, which is night hour.

3. The learned counsel for the petitioner, apart from reiterating the above grounds contended that the allegation itself is that the driver of the bus transported the arrack packets; and when the petitioner noticed the arrack packets he immediately went to the police station and gave the complaint and therefore the petitioner's bona fide is proved and if at all the driver has transported the arrack, petitioner cannot be held responsible since it was kept near the driver's seat and at the most the petitioner can be treated only as negligent in discharge of his duties, for which the punishment of dismissal by the management which was modified to the one of reinstatement without backwages and without continuity of service, is disproportionate to the gravity of the delinquency alleged. Further the learned counsel for the petitioner submits that the driver of the bus has involved in a previous incident of the same nature and considering his two years of previous service he was reinstated afresh by the management by entering into 18(1) settlement and the same yardstick cannot be applied to the petitioner by the Labour

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court since the petitioner has put in 23 years of service and so far as petitioner is concerned, there is no previous delinquency of this nature. Hence the learned counsel requested this Court to modify the punishment since the order of the Labour Court is disproportionate to the delinquency alleged.

4. The learned counsel appearing for the first respondent submitted that the Labour Court in exercise of its powers under section 11-A of the Industrial Disputes Act, modified the punishment awarded to the petitioner, taking note of the 18(1) settlement entered into between the management and the driver, and the petitioner and driver having been involved in the same incident, the order passed by the Labour Court appointing the petitioner afresh, is perfectly legal and valid. The management pursuant to the order of the Labour Court reinstated the petitioner on 4.4.1997 and the petitioner cannot claim continuity of service and backwages when the misconduct alleged against him has been proved in the enquiry.

5. I have considered the submissions of the learned counsel appearing for the petitioner as well as the first respondent.

6. The report of the Checking inspectors merely states that the petitioner and the driver of the bus were responsible for the transport of 49 packets of arrack in a gunny bag. The charge memo issued to the petitioner states that the driver of the bus transported the arrack packets, which was not noticed by the petitioner, he being the conductor of the bus and he failed in his duties. The other charges are incidental to the main charge alleged. In the explanation submitted by the petitioner it is stated that the time of checking was 8.00 p.m and 137 passengers were travelling in the said bus and the gunny bag was too small baggage and the same having been placed near the seat of the driver, the petitioner could not notice the same and immediately after noticing the same, petitioner went to the police station and gave a complaint. The Enquiry Officer found that the petitioner and driver of the bus are responsible for the transport of the arrack packets and by giving complaint to the Police by the petitioner, the goodwill of the Corporation is damaged. The Labour Court also confirmed the finding of the Enquiry Officer.

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7. Before considering the matter in issue, it is proper to refer to the allegation, which reads as under,

> "You, Thiru Venkatesan, Conductor No.8517, on 27.3.1992, while on duty in Bus bearing registration No.TN-23-N-0292 - Route No.459-A, proceeding towards Tiruppathur, near Pachur railway gate, the Checking Inspectors made inspection and found a gunny bag containing 49

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packets of arrack near the driver's seat, thereby you, allowed the driver of the bus to smuggle the said contraband against the rules of the Corporation and failed to discharge the duty of Conductor."

8. The point in issue is whether the petitioner has intentionally or with knowledge, permitted the transport of arrack packets by the driver. The inability to notice the contraband placed near the driver's seat is well established by the fact that 137 passengers were in the bus at the time of checking and the same is not disputed. The passenger capacity of the bus is only 56. Therefore the petitioner cannot be blamed for not noticing the said arrack packets, which were found near the driver's seat. The driver is the person allegedly transported arrack packets and the gunny bag was placed very near to his seat. At the best, petitioner can be blamed for dereliction of duty in not noticing the luggage found near the driver's seat, for which the order of dismissal passed by the management is too harsh, which was rightly set aside by the Labour Court.

9. Insofar as the denial of continuity of service and backwages are concerned, the Labour Court applied 18(1) settlement entered into between the driver of the bus and the management. The 18(1) settlement was entered into with the driver taking note of his two years of previous service and he agreed for re-appointment without continuity of service. Further as rightly pointed out by the learned counsel for the petitioner, the driver was previously involved in a similar incident. Whereas, the petitioner never involved in similar previous incident. Apart from that the petitioner has put in more than 23 years of service and continuity of service if denied, it will cause great prejudice to the petitioner. I have already given a finding that due to overloading of the bus the petitioner could not see the placement of gunny bag containing arrack packets near the seat of the driver and having regard to the services rendered by the petitioner for over 23 years, the denial of continuity of service to the petitioner will cause great hardship to him as he will lose the incremental benefits and other service benefits received all along and by re-appointing him afresh petitioner's salary will be very much reduced.

10. Therefore, I am of the view that the Labour Court is right in denying backwages on the principle of "no work no pay" because the petitioner was out of employment and the denial of continuity of service insofar as petitioner is concerned, cannot be justified taking note of the unintentional dereliction of duty, for which the driver of the bus has already been punished, particularly when the charge is that the driver of the bus carried the contraband containing 49 packets of arrack.

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11. The impugned award insofar as comparing the driver of the bus with the petitioner, who is a conductor, having regard to the nature of of the charge for awarding similar punishment is therefore to be treated as perverse finding. The Honourable Supreme Court in the decision reported in 1982(I) LLJ 54 (Shri J.D.Jain Vs. The Management of State Bank of India and another) in paragraph 7 held thus,

> "In an application for a writ of certiorari under Art.226 of the Constitution for quashing an award of an Industrial Tribunal, the jurisdiction of the High Court is limited. It can quash the award, inter alia, when the Tribunal has committed an error of law apparent on the face of the record or when the finding of facts of the Tribunal is perverse. In the case before us, according to the Tribunal, as Kansal was not examined, the evidence before it was hearsay and as such on the basis thereof the appellant could not be legally found guilty."

In the decision reported in 2000 (II) LLJ 902 (Anna Transport Corporation Ltd., Salem v. Presiding Officer, Labour Court, Coimbatore and Another), this Court, following the judgments of the Apex Court, in paragraphs 10 to 13 held thus,

> "10. This Court in the exercise of writ jurisdiction under Art.226, where a petition is filed seeking a relief by way of quashing of award given by the Labour Court under Sec.11-A of the Industrial Disputes Act, has limited jurisdiction to demolish the impugned award, where according to this Court, such award is palpably erroneous.
>
> 11. As a general rule, the High Court would not interfere unless the order of the Labour Court is perverse or not based on any evidence or grossly illegal or based on a complete misconception of law or that no reasonable man would come to the conclusion to which the Labour Court has arrived at.
>
> 12. There is no hard and fast rule that it has always to send the matter back to the Labour Court for appropriate adjudication and for passing appropriate order in accordance with law, but in order to avoid delayed justice and for vindication of speedy and appropriate relief, the High Court may in appropriate cases incorporate its own findings which may appear to be just and proper.

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> 13. It cannot be an established rule that the High Court ought not to interfere, while exercising writ jurisdiction, with the discretion exercised by the Labour Court under Sec.11-A of the act and exercise that jurisdiction itself. What the Labour Court should do and when there is an omission on the part of it to do that, the Court, in exercise of the powers under Art.226 of the Constitution of India, can certainly do. What the Labour Court may in its discretion do, the High Court too can, under Art.226, if facts compel it to do so."

12. Hence, to meet the ends of justice, I modify the punishment awarded by the Labour Court as to one of reinstatement with continuity of service without backwages in view of the nature of delinquency said to have been committed by the petitioner. Had there been limited passengers in the bus, i.e., within the permissible limit of 56, the management would have been right in proceeding against the petitioner by imposing severe punishment. In view of overloading in the bus, petitioner cannot be held responsible for the alleged delinquency committed by the driver of the bus.

13. In the result, the award of the Labour Court is modified with a direction to reinstate the petitioner with continuity of service and not as new entrant, but without backwages. By virtue of the grant of continuity of service, petitioner's salary shall be refixed taking note of the incremental benefits to which he is entitled and his salary shall be notionally fixed and paid from the date of his reinstatement. It is also made clear that continuity of service given to petitioner shall be counted for increment and for all other benefits.

The writ petition is partly allowed as above. No costs.

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Sd/
Asst.Registrar

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Sub Asst.Registrar

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To

1.The Presiding Officer, Labour Court, Vellore.

2.The Managing Director, Tamilnadu State Transport Corporation
Vellore Division, Vellore.

+ one cc to Mr.D.Hariparanthaman, Sr.no.26759.
+ one cc to Mr.V.R.Kamalanathan, Sr.No.26194.

HPR (CO)
RSM/28.6.2006

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